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TRA DOCKET ROOM  
February 6, 2004

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VIA HAND DELIVERY

Hon. Deborah Taylor Tate, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

Re. CAT Communications International, Inc. v BellSouth  
Telecommunications, Inc  
Docket No 04-00010

Dear Chairman Tate

Enclosed are the original and fourteen copies of BellSouth's *Motion to Dismiss Complaint*. Copies of the enclosed are being provided to counsel for CAT Communications.

Very truly yours,



Guy M Hicks

GMH ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee

In Re: *CAT Communications International, Inc.* v. *BellSouth Telecommunications, Inc.*  
Docket No. 04-00010

**BELLSOUTH TELECOMMUNICATIONS, INC.'S**  
**MOTION TO DISMISS COMPLAINT**

BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits this Motion to Dismiss the Complaint filed by CCI Communications International, Inc. ("CCI") on the grounds that the Complaint lacks merit as a matter of law and therefore should be dismissed by the Tennessee Regulatory Authority ("the Authority").

There is no dispute that CCI currently purchases and resells BellSouth services pursuant to a resale agreement entered into between CCI and BellSouth on November 6, 2002.<sup>1</sup> The agreement was approved by the Authority pursuant to Section 252(e)(1) of the Telecommunications Act of 1996 on September 8, 2003 in Docket No. 03-00453.

CCI complains that BellSouth is inappropriately collecting "911" fees and telecommunications relay surcharges from CCI. Specifically, CCI states that it collects these charges from its end users, and therefore, should be allowed to maintain the associated administrative fee allowed by T C A. § 7-86-110(b). CCI

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<sup>1</sup> See CCI *Complaint* at paragraph 3. More specifically, CCI purchases and resells service pursuant to the resale sections of an interconnection agreement, including Attachment 7 to the agreement, which addresses billing matters.

requests that the Authority direct BellSouth "to cease and desist from charging or collecting 911 and other surcharges from CCI."

CCI's Complaint should be dismissed as a matter of law. CCI neglected to point out to the Authority that Section 115 of Attachment 7 of its interconnection agreement with BellSouth states in part that:

***BellSouth will also bill CCI and CCI will be responsible for and remit to BellSouth, all charges applicable to resold services including but not limited to 911 and E911 charges, End Users common line charges, federal subscriber line charges, telecommunications relay charges (TRS), and franchise fees. (emphasis added. See Attachment 7, page 3).***

The BellSouth activity complained of by CCI is, therefore, exactly what CCI and BellSouth agreed to do in the Authority-approved interconnection agreement.

Moreover, CCI's apparent contention that BellSouth's actions somehow violate Tennessee law is also without merit. It is undisputed that pursuant to the interconnection agreement, BellSouth collects the "911" charges from CCI, deducts the fee for administration, and remits the funds to the County 911 districts pursuant to T.C.A. §7-86-110. BellSouth also provides required accountings to the districts. CCI passes the "911" fee on to its end users.

Nothing in T.C.A. §7-86-110 prohibits this process and, consistent with the interconnection agreement between BellSouth and CCI, the process works the way it was intended. Bellsouth assumes the administrative burden of remitting 911 charges and providing an annual accounting to the board of directors of each district of the amounts billed and collected and of the disposition of such amounts

See T.C.A. §7-86-110(d). Therefore, it is only fair that BellSouth should receive the three percent administrative fee.

CCI's conclusory claim inaccurately suggests that the 911 and relay service are funded in a similar manner. They are not. In Tennessee, the relay service for the hearing impaired is funded by annual access charge adjustments requested and approved by the Authority.<sup>2</sup> The relay service program is administered by the Authority. Contrary to CCI's claims, the relay service is not funded by CCI's collection of service charges from its end-users.<sup>3</sup> Therefore, CCI's claim with respect to relay service also lacks merit as a matter of law.

BellSouth has successfully negotiated a large number of resale agreements in Tennessee. Those agreements have been approved by the Authority. In accordance with those agreements, BellSouth has consistently acted as the service supplier for purposes of remitting 911 charges to the districts and providing annual accountings. The county 911 districts have not complained about this process. To BellSouth's knowledge, no reseller other than CCI has complained. The same is true for the existing funding and payment mechanism for relay services. The mechanisms for both 911 and relay service funding have proven to be reliable over the years and there is simply no need to assume the risk inherent in CCI's proposal. If the Authority grants the relief requested by CCI and a reseller goes out of business, the flow of 911 money to the counties and relay service money to the Authority could be jeopardized.

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<sup>2</sup> See, for example, attached Authority Staff letter of November 21, 2003 requesting an access charge rate additive, and December 5, 2003 Authority approval of BellSouth tariff implementing the rate adjustment

BellSouth requests that the Authority find that CCI's *Complaint* is, as matter of law, inconsistent with CCI's resale agreement and therefore should be dismissed.<sup>4</sup>

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

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<sup>3</sup> See Paragraph 5 of CCI's *Complaint*

<sup>4</sup> The Authority should exercise its discretion to decline to convene a contested case See *Consumer Advocate Division v Greer*, 967 S W 2d 759, 1988 Tenn LEXIS 185

**CERTIFICATE OF SERVICE**

I hereby certify that on February 6, 2004, a copy of the foregoing document was served on the following, via the method indicated

- ☐ Hand
- ☒ Mail
- ☐ Facsimile
- ☐ Overnight
- ☐ Electronic

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